IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: :
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    Thomas P. Chmara *et al.*   :   Group Art Unit: 2661
                               :
Appln. No.: 09/750,096   :
                               :   Examiner: Brian D. Nguyen
Filed: December 29, 2000   :
                               :
For: METHOD AND SYSTEM FOR   :
    PROVIDING ROBUST CONNECTIONS :
    IN NETWORKING APPLICATIONS   :

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Commissioner for Patents
P.O. Box 1450
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<u>**REQUEST FOR PRE-APPEAL BRIEF CONFERENCE**</u>

Pursuant to the Pre-Appeal Brief Conference Pilot Program announced in the Official Gazette, Applicants hereby request a pre-appeal brief conference in the above-referenced case.

This application is appropriate for a pre-appeal brief conference. A brief history of this application and why Applicants believe that an appeal will succeed are set forth below.

This application was filed over five years ago on December 29, 2000. On April 6, 2004, an initial office action was issued rejecting all twenty-two (22) claims under 35 U.S.C. §103(a) as being unpatentable over Shinbashi (U.S. Patent No. 5,796,717) in view of Leung (U.S. Patent No. 6,111,852).

Despite various attempts to distinguish this application from the cited references, the Office continued to issue office actions rejecting most claims in view of the above and other

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references that are certain to be overturned on appeal. Currently, claims 1-4, 7-12, 15-18 and 21-27 stand rejected under §103(a) as being unpatentable over: (1) Shinbashi in view of Albert (U.S. Patent No. 6,606,315), or (2) Shinbashi in view of Albert, further in view of Adams (U.S. Patent No. 5,444,782) or Koodli (U.S. Patent No. 6,608,841). Rather than further time being spent addressing these references, Applicants have elected to pursue the new pilot program.

As set forth in greater detail in Applicants' responses dated July 6, 2004 and April 29, 2005, the cited references -- taken either singly or in combination -- fail to teach or suggest numerous recitations of the pending claims. In particular, Applicants respectfully submit, however, that Albert does not teach or suggest "synchronizing means operatively connected to the primary node and the backup node for synchronizing the at least one backup node and the primary node." Rather, Applicants respectfully submit that Albert merely teaches two service managers 241 and 242 that provide decision-making capability (e.g., load balancing) to two forwarding agent, not synchronizing means operatively connected to the primary node and the backup node for *synchronizing* the at least one *backup node* and the *primary node*:

> A service manager 241 and a second service manager 242 also communicate with the forwarding agents. *The service managers provide the decision making capability that is required to provide a network service such as load balancing. The service managers send specific instructions to each of the forwarding agents detailing how certain flows of packets are to be processed. Such packet processing may include simply routing the packet, gathering statistics about the packet, sending the packet to a service manager, sending a notification that the packet has been seen to a service manager, modifying the packet, or using a*

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> *special method such as tunneling or tag switching to send the packet to a destination other than the destination specified by the destination IP address included in the packet header.* It should also be noted that forwarding agents in other embodiments also modify other aspects of packets, including packet source and destination addresses and port numbers and, in some instances, packet data.

See, Shinbashi, Col. 7, lines 22-39 (emphasis added).

Further, Applicants respectfully submit that forwarding agents 1 and 2 of Albert do not respectively comprise a primary node and a backup node, or vice-versa, as required by claim 9. In particular, there is no teaching or suggestion in Albert that forwarding agent 1 or 2 is a backup node to the other.

Therefore, Applicants respectfully submit that Albert does not teach or suggest "synchronizing means operatively connected to the primary node and the backup node for synchronizing the at least one backup node and the primary node," as expressly recited in claim 9. Specifically, Applicants respectfully submit that there is no teaching or suggestion that service managers disclosed in Albert function to "synchronize" the at least one backup node and the primary node in the manner claimed.

Moreover, Applicants respectfully submit that one of ordinary skill in the art would not have been motivated to combine the teachings of Shinbashi and Albert. Shinbashi relates to a system for switching units in digital multiplexing equipment having a plurality of units for multiprocessing signals (e.g., multiplexing or de-multiplexing), and would thus not benefit from incorporating -- and indeed is incompatible with -- the load balancing and packet filtering systems and methods disclosed by Albert. In fact, even if the two

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references were combined, Applicants respectfully submit such a combination would not result in the claimed invention. In particular, Albert expressly teaches that "[t]here is no point through which all traffic between devices connected to network 210 and the group of servers must pass. *Instead some traffic from network 210 and group of servers 220 passes through a forwarding agent 231 and some traffic between network 210 and group of servers 220 passes through a forwarding agent 232.*" Further, Albert does not teach or suggest that either of forwarding agents 1 or 2 is a backup node to the other. Applicants respectfully submit, therefore, that the emphasized portion makes clear that Albert's diffused distribution of signals functionality is not compatible with, and indeed works against, the back-up systems and methods disclosed by Shinbashi.
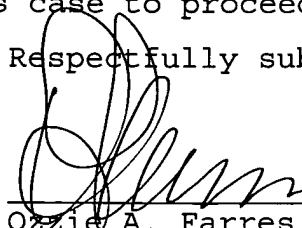
The remaining independent claims (e.g., claims 1 and 17) recite related subject matter to independent claim 9, and are therefore allowable for reasons similar to those given above.

The dependent claims 2-4, 7-8, 10-12, 15-16, 18, and 21-27, are allowable at least by virtue of their dependency on the above-identified independent claims. Moreover, these claims recite additional features which are not claimed, disclosed, or even suggested by the cited references taken either alone or in combination. For example, claims 25-27 expressly recite "wherein the ingress and egress traffic comprise session context information." Applicants respectfully submit that neither Shinbashi, Albert, nor Adam, alone or in combination, teach or suggest such a feature or functionality.

For these reasons, Applicants request an appeal conference be convened to advise Applicants whether the Office will 1)

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allow the present claims, 2) reopen prosecution and issue a new office action or 3) allow this case to proceed to appeal.

Respectfully submitted,

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